THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 17919 of 2005

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FRIDAY, THE TWELFTH DAY OF AUGUST
TWO THOUSAND AND FIVE

Between:

Gudi Subbaiah S/o. Krishnayya
R/o.Koniki Village, Inkollu Mandal Prakasam District.

..... PETITIONER

AND

1 Sri Bhimeswara Swamy Vari Devasthanam Rep.by its Execitve Officer
R/o. Koniki Village, Inkollu Mandal, Prakasam District.
2 The Commissioner, Endowments Department
Boggulkunta Hyderabad
3 The Assistant Commissioner Endowments Department
Ongole Prakasam District.

.....RESPONDENTS

The Court, at the stage of admission, made the following:

ORAL ORDER:-

The petitioner claims to have been a tenant of Sri Bhimeswara Swamy Vari Devasthanam, Koniki village, Inkollu mandal, Prakasam district since last twenty years in respect of dry lands ad-measuring Ac.11-90 cents. Earlier, when the petitioner apprehended eviction, he preferred a writ petition No.10395 of 2003 seeking invalidation of an earlier auction notice dated 21-04-2003. The said writ petition was disposed of by the judgment of this court dated 10-06-2003 recording the petitioner's claim to being a landless poor and therefore entitled to the benefits under Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and observing that if the petitioner claims the status of a landless poor person before the concerned Assistant Commissioner, the said application shall be decided; and if he is declared as landless poor person by the Assistant Commissioner concerned, *qua* the explanation to Section 82 of the Act, he shall be deemed to be a lessee at the rates fixed for such purpose by the proper procedure and pending determination of his status as a tenant, no steps be taken to dispossess him. The concerned authority was also directed to fix the rate of lease by collecting the necessary information or by inviting bids. The said writ petition was disposed of on 10-06-2003 at the stage of admission. This court also made it clear that after the concerned authorities fixed the lease, the petitioner should be agreeable to such amount and if he is not agreeable to such amount, the land could be resumed and put to auction.

Thereafter, the petitioner made an application on 30-06-2003 to be declared as a landless poor person and to the benefits under Section 82 of the Act, on that basis. It is the case of the petitioner that no orders have been passed on the said application by the 3rd respondent as yet and, therefore, in terms of the earlier judgment referred to supra, he is entitled to continue and is immune from dispossession for the purpose of leasing out the land to whoever is the highest bidder in the auction. The petitioner states that the auction notice issued on behalf of the 1st respondent-Devasthanam for future lease hold rights of the Devasthanam lands is invalid, as it would have effect the dispossessing the petitioner from the lands in question.

Section 82 of the Act declares that any lease of agricultural lands which are endowed for the purpose of any institution or endowment subsisting on the date of commencement of Act, shall notwithstanding anything in any other law for the time being in force, held by a person, who is not a landless poor person, stand cancelled.

There is, thus a statutory declaration of determination of all leases except those held by landless poor persons. The Explanation set out in Sub-section (2) of Section 82 of the Act defines, for the purpose of Sub-section (2) a 'landless poor person' as a person who *inter alia* holds a total extent of land not in excess Ac.5-00 of dry land or two and half acres of wet land, either as owner or as cultivating tenant or as both.

On the petitioner's own pleadings, he is the cultivating tenant of an extent of Ac.11-90 cents of dry land. He is thus clearly not a landless poor person and, therefore, disentitled to the benefits under Section 82 of the Act. The lease in his favour stood determined by the statutory declaration under Section 82 of the Act and therefore as on date he is an encroacher. In the circumstances, the petitioner does not enjoy any immunity or any legal right or legitimate expectation for continuance in the lands in question. Such non-right of the petitioner cannot be fertilized into a right by the lethargy of the

respondents in disposing of his application for determination as a landless poor person.

It is, however, required to be noticed that it is inconceivable as to why the 3rd respondent did not consider it possible, desirable or practicable to dispose of the petitioner's application for determination as a landless poor person in the context of such clear statutory position. Such inaction by the hierarchy of officers in the Endowment department permits a legitimate inference that they are catalysts to the mismanagement of endowment properties and as their very existence is postulated to be for the purpose of ensuring proper management. The lethargy on the part of the endowment officials could not be understood as creating a right in favour of an individual in subversion of the legitimate rights of the endowment to a reasonable return on its properties.

On the above analysis, the petitioner has not made out any legal case for resisting the auction of the 1st respondent-devasthanam lands as notified by the 1st respondent by the auction notice dated 02-08-2005. If the petitioner is eligible, he is certainly entitled to bid at the auction, but he cannot squat on the lands any longer. Section 82 of the Act does not permit it and this court cannot mandamise such a situation. There are no merits in the writ petition. Accordingly, the writ petition is dismissed.

Any application of the petitioner to any equitable disposition on his claim that there is a standing crop, shall be considered by the competent authority duly balancing the rights and interests of the endowment properties with the claimed equities of the petitioner and in the context of petitioner's continuance in the land in question without any lawful right or authority all these years. No costs.

GODA RAGHURAM, J

Dated: 12-08-2005

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